

# SENATE BILL 633

N2

2lr1198

---

By: **Senator Frosh**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Elective Share – Augmented Estate**

3 FOR the purpose of repealing certain provisions of law relating to a surviving spouse  
4 making an election to take a certain share of the net estate of the decedent  
5 instead of the property left to the surviving spouse under the will; providing  
6 that a surviving spouse is entitled to take a certain elective share amount of a  
7 certain augmented estate; providing for a certain supplemental elective-share  
8 amount; establishing that certain amounts are not to be charged to the elective  
9 share; providing for the composition of a certain component of an augmented  
10 estate; providing for the composition of the net probate estate of a certain  
11 decedent; establishing the values of certain nonprobate transfers by the  
12 decedent to others in the composition of an augmented estate; establishing the  
13 values of certain nonprobate transfers by the decedent to the surviving spouse  
14 in the composition of an augmented estate; establishing the values of property  
15 owned by the surviving spouse at the death of the decedent in the composition of  
16 an augmented estate with certain additions and reductions; providing for  
17 certain exclusions from the nonprobate transfers by the decedent to others;  
18 establishing the priority to be used in determining the sources from which a  
19 certain elective share amount is payable; providing for the personal liability of  
20 certain recipients of certain nonprobate transfers; establishing the proceeding to  
21 be used to make an elective share; establishing certain time limits to make an  
22 elective share; clarifying that the right of a certain election may be exercised  
23 only by or on behalf of a certain surviving spouse; authorizing the waiver of a  
24 certain right of election; providing certain protections to certain payors and  
25 other third parties who made certain payments or took certain other actions  
26 before receiving notice of a certain election; defining certain terms; providing for  
27 the application of this Act; and generally relating to surviving spouses and  
28 elective shares in the estates and trusts law.

29 BY repealing and reenacting, with amendments,  
30 Article – Estates and Trusts

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 The subtitle designation "Subtitle 2. Family Allowance" to immediately precede  
2 Section 3-201  
3 Annotated Code of Maryland  
4 (2011 Replacement Volume and 2011 Supplement)

5 BY repealing and reenacting, without amendments,  
6 Article – Estates and Trusts  
7 Section 3-201 and 3-202  
8 Annotated Code of Maryland  
9 (2011 Replacement Volume and 2011 Supplement)

10 BY repealing  
11 Article – Estates and Trusts  
12 Section 3-203 through 3-208  
13 Annotated Code of Maryland  
14 (2011 Replacement Volume and 2011 Supplement)

15 BY adding to  
16 Article – Estates and Trusts  
17 Section 3-401 through 3-414 to be under the new subtitle "Subtitle 4. Elective  
18 Share of Surviving Spouse"  
19 Annotated Code of Maryland  
20 (2011 Replacement Volume and 2011 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Estates and Trusts**

24 Subtitle 2. Family Allowance [and Statutory Share of Surviving Spouse].

25 3-201.

26 (a) The surviving spouse is entitled to receive an allowance of \$5,000 for  
27 personal use.

28 (b) An allowance of \$2,500 for the use of each unmarried child of the  
29 decedent who has not attained the age of 18 years at the time of the death of the  
30 decedent shall be paid by the personal representative as provided in § 13-501 of this  
31 article.

32 3-202.

33 The estates of dower and curtesy are abolished.

34 [3-203.

1 (a) In this section, “net estate” means the property of the decedent passing  
2 by testate succession, without a deduction for State or federal estate or inheritance  
3 taxes, and reduced by:

4 (1) Funeral and administration expenses;

5 (2) Family allowances; and

6 (3) Enforceable claims and debts against the estate.

7 (b) Instead of property left to the surviving spouse by will, the surviving  
8 spouse may elect to take a one-third share of the net estate if there is also a surviving  
9 issue, or a one-half share of the net estate if there is no surviving issue.

10 (c) The surviving spouse who makes this election may not take more than a  
11 one-half share of the net estate.

12 (d) For the purposes of this section, the net estate and the property allocable  
13 to a share of a surviving spouse shall be valued as of the date or dates of distribution.

14 (e) (1) For the purposes of this section, a surviving spouse who has elected  
15 to take against a will shall be entitled to the surviving spouse’s portion of the income  
16 earned on the net estate during the period of administration based on a one-third or  
17 one-half share, whichever is applicable.

18 (2) If one or more distributions have been made to a surviving spouse  
19 or another person that require an adjustment in the relative interests of the  
20 beneficiaries, the applicable share shall be adjusted.]

21 [3-204.

22 The right of election of the surviving spouse is personal to him. It is not  
23 transferable and cannot be exercised subsequent to his death. If the surviving spouse  
24 is under 18 years of age or under disability, the election may be exercised by order of  
25 the court having jurisdiction of the person or property of the spouse or person under  
26 disability.]

27 [3-205.

28 The right of election of a surviving spouse may be waived before or after  
29 marriage by a written contract, agreement, or waiver signed by the party waiving the  
30 right of election. Unless it provides to the contrary, a waiver of “all rights” in the  
31 property or estate of a present or prospective spouse, or a complete property  
32 settlement entered into after or in anticipation of separation or divorce, is a waiver of  
33 any right to his family allowance as well as to his elective share by each spouse in the  
34 property of the spouse, his right to letters under § 5-104 of this article, and is an  
35 irrevocable renunciation of any benefit which would pass to him from the other by

1 intestate succession, by statutory share, or by virtue of the provisions of a will  
2 executed before the waiver or property settlement.]

3 [3-206.

4 (a) (1) The election by a surviving spouse to take an elective share shall  
5 be made within the later of:

6 (i) Nine months after the date of the decedent’s death; or

7 (ii) Six months after the first appointment of a personal  
8 representative under a will.

9 (2) (i) Within the period for making an election, the surviving  
10 spouse may file with the court a petition for an extension of time, with a copy given to  
11 the personal representative.

12 (ii) For good cause shown, the court may extend the time for  
13 election for a period not to exceed three months at a time.

14 (b) The surviving spouse may withdraw the election at any time before the  
15 expiration of the time for making the election to take an elective share.]

16 [3-207.

17 (a) An election to take an elective share of an estate of a decedent shall be in  
18 writing and signed by the surviving spouse or other person entitled to make the  
19 election pursuant to § 3-204 of this subtitle, and shall be filed in the court in which  
20 the personal representative of the decedent was appointed.

21 (b) The election may be in this form.

22 I, A. B., surviving spouse of C. D., late of the County (City) of ....., renounce  
23 all provisions in the will of C. D. and elect to take my elective share of the decedent’s  
24 estate.

25 .....  
26 (Signature)]

27 [3-208.

28 (a) (1) Upon the election of the surviving spouse to take the elective share  
29 of the property of the decedent, all property or other benefits which would have passed  
30 to the surviving spouse under the will shall be treated as if the surviving spouse had  
31 died before the execution of the will.

1           (2)     The surviving spouse and a person claiming through the surviving  
2 spouse may not receive property under the will.

3           (b)    (1)     If there is an election to take an elective share, contribution to the  
4 payment of it shall be prorated among all legatees.

5           (2)     Instead of contributing an interest in specific property to the  
6 elective share, a legatee or legatees, but not the personal representative, may pay the  
7 surviving spouse in cash, or other property acceptable to the spouse, an amount equal  
8 to the fair market value of the surviving spouse's interest in specific property on the  
9 date or dates of distribution.

10          (3)     Unless specifically provided in the will, a legatee is not entitled to  
11 sequestration or compensation from another legatee, or from another part of the estate  
12 of the decedent, except that an interest renounced by the surviving spouse and not  
13 included in the share of the net estate received by the surviving spouse under this  
14 section may be subject to sequestration for the benefit of individuals who are the  
15 natural objects of the bounty of the decedent, in order to avoid a substantial distortion  
16 of the intended dispositions of the testator.]

17                   **SUBTITLE 4. ELECTIVE SHARE OF SURVIVING SPOUSE.**

18           **3-401.**

19           **(A)    IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
20 **INDICATED.**

21           **(B)    “AUGMENTED ESTATE” MEANS THE PROBATE ESTATE OF THE**  
22 **DECEDENT INCREASED IN ACCORDANCE WITH THE PROVISIONS OF THIS**  
23 **SUBTITLE.**

24           **(C)    “DECEDENT’S NONPROBATE TRANSFERS TO OTHERS” MEANS THE**  
25 **AMOUNTS THAT ARE INCLUDED IN THE AUGMENTED ESTATE UNDER § 3-405 OF**  
26 **THIS SUBTITLE.**

27           **(D)    “FRACTIONAL INTEREST IN PROPERTY HELD IN JOINT TENANCY**  
28 **WITH THE RIGHT OF SURVIVORSHIP” MEANS THE FRACTION, THE NUMERATOR**  
29 **OF WHICH IS ONE AND THE DENOMINATOR OF WHICH, IF THE DECEDENT WAS A**  
30 **JOINT TENANT, IS ONE PLUS THE NUMBER OF JOINT TENANTS WHO SURVIVE**  
31 **THE DECEDENT AND WHICH, IF THE DECEDENT WAS NOT A JOINT TENANT, IS**  
32 **THE NUMBER OF JOINT TENANTS, WHETHER THE FRACTIONAL INTEREST IS**  
33 **UNILATERALLY SEVERABLE OR NOT.**

1           **(E) “MARRIAGE”, AS IT RELATES TO A TRANSFER BY THE DECEDENT**  
2 **DURING MARRIAGE, MEANS ANY MARRIAGE OF THE DECEDENT TO THE**  
3 **SURVIVING SPOUSE OF THE DECEDENT.**

4           **(F) (1) “NONADVERSE PARTY” MEANS A PERSON WHO DOES NOT**  
5 **HAVE A SUBSTANTIAL BENEFICIAL INTEREST IN THE TRUST OR OTHER**  
6 **PROPERTY ARRANGEMENT THAT WOULD BE ADVERSELY AFFECTED BY THE**  
7 **EXERCISE OR NONEXERCISE OF THE POWER THAT THE PERSON POSSESSES**  
8 **RESPECTING THE TRUST OR OTHER PROPERTY ARRANGEMENT.**

9           **(2) “NONADVERSE PARTY” DOES NOT INCLUDE A PERSON HAVING**  
10 **A GENERAL POWER OF APPOINTMENT OVER THE PROPERTY.**

11           **(G) “POWER” OR “POWER OF APPOINTMENT” INCLUDES A POWER TO**  
12 **DESIGNATE THE BENEFICIARY OF A BENEFICIARY DESIGNATION.**

13           **(H) “PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT”**  
14 **MEANS A POWER OF APPOINTMENT UNDER WHICH, AT THE TIME IN QUESTION,**  
15 **THE DECEDENT, WHETHER OR NOT THE DECEDENT THEN HAD THE CAPACITY TO**  
16 **EXERCISE THE POWER, HELD A POWER TO CREATE A PRESENT OR FUTURE**  
17 **INTEREST IN THE DECEDENT, THE CREDITORS OF THE DECEDENT, THE ESTATE**  
18 **OF THE DECEDENT, OR THE CREDITORS OF THE ESTATE OF THE DECEDENT, AND**  
19 **INCLUDES A POWER TO REVOKE OR INVADE THE PRINCIPAL OF A TRUST OR**  
20 **OTHER PROPERTY ARRANGEMENT.**

21           **(I) “PROPERTY” INCLUDES VALUES SUBJECT TO A BENEFICIARY**  
22 **DESIGNATION.**

23           **(J) “RIGHT TO INCOME” INCLUDES A RIGHT TO PAYMENTS UNDER A**  
24 **COMMERCIAL OR PRIVATE ANNUITY, AN ANNUITY TRUST, A UNITRUST, OR A**  
25 **SIMILAR ARRANGEMENT.**

26           **(K) “TRANSFER”, AS IT RELATES TO A TRANSFER BY OR OF THE**  
27 **DECEDENT, INCLUDES:**

28           **(1) AN EXERCISE OR RELEASE OF A PRESENTLY EXERCISABLE**  
29 **GENERAL POWER OF APPOINTMENT HELD BY THE DECEDENT;**

30           **(2) A LAPSE AT DEATH OF A PRESENTLY EXERCISABLE GENERAL**  
31 **POWER OF APPOINTMENT HELD BY THE DECEDENT; AND**

32           **(3) AN EXERCISE, RELEASE, OR LAPSE OF A GENERAL POWER OF**  
33 **APPOINTMENT THAT THE DECEDENT CREATED IN THE DECEDENT AND OF A**

1 POWER DESCRIBED IN § 3-405(2) OF THIS SUBTITLE THAT THE DECEDENT  
2 CONFERRED ON A NONADVERSE PARTY.

3 **3-402.**

4 (A) THE SURVIVING SPOUSE OF A DECEDENT WHO DIES DOMICILED IN  
5 THIS STATE HAS A RIGHT OF ELECTION, UNDER THE LIMITATIONS AND  
6 CONDITIONS STATED IN THIS SUBTITLE, TO TAKE AN ELECTIVE SHARE AMOUNT  
7 EQUAL TO 50% OF THE VALUE OF THE MARITAL PROPERTY PORTION OF THE  
8 AUGMENTED ESTATE.

9 (B) (1) IF THE SUM OF THE AMOUNTS DESCRIBED IN § 3-407 OF THIS  
10 SUBTITLE, § 3-409(A)(1) OF THIS SUBTITLE, AND THAT PART OF THE ELECTIVE  
11 SHARE AMOUNT PAYABLE FROM THE NET PROBATE ESTATE OF THE DECEDENT  
12 AND NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS UNDER §  
13 3-409(C) AND (D) OF THIS SUBTITLE IS LESS THAN \$75,000, THE SURVIVING  
14 SPOUSE IS ENTITLED TO A SUPPLEMENTAL ELECTIVE SHARE AMOUNT EQUAL TO  
15 \$75,000, MINUS THE SUM OF THE AMOUNTS DESCRIBED IN THOSE SECTIONS.

16 (2) THE SUPPLEMENTAL ELECTIVE SHARE AMOUNT IS PAYABLE  
17 FROM THE NET PROBATE ESTATE OF THE DECEDENT AND FROM RECIPIENTS OF  
18 THE NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS IN THE ORDER OF  
19 PRIORITY SET FORTH IN § 3-409(C) AND (D) OF THIS SUBTITLE.

20 (C) IF THE RIGHT OF ELECTION IS EXERCISED BY OR ON BEHALF OF  
21 THE SURVIVING SPOUSE, THE HOMESTEAD ALLOWANCE OF THE SURVIVING  
22 SPOUSE, EXEMPT PROPERTY, AND FAMILY ALLOWANCE, IF ANY, ARE NOT  
23 CHARGED AGAINST BUT ARE IN ADDITION TO THE ELECTIVE SHARE AND  
24 SUPPLEMENTAL ELECTIVE SHARE AMOUNTS.

25 (D) THE RIGHT, IF ANY, OF THE SURVIVING SPOUSE OF A DECEDENT  
26 WHO DIES DOMICILED OUTSIDE THIS STATE TO TAKE AN ELECTIVE SHARE IN  
27 PROPERTY IN THIS STATE IS GOVERNED BY THE LAW OF THE DOMICILE OF THE  
28 SURVIVING SPOUSE AT DEATH.

29 **3-403.**

30 (A) SUBJECT TO § 3-408 OF THIS SUBTITLE, THE VALUE OF THE  
31 AUGMENTED ESTATE, TO THE EXTENT PROVIDED IN §§ 3-404, 3-405, 3-406,  
32 AND 3-407 OF THIS SUBTITLE, CONSISTS OF THE SUM OF THE VALUES OF ALL  
33 PROPERTY, WHETHER REAL OR PERSONAL, MOVABLE OR IMMOVABLE,  
34 TANGIBLE OR INTANGIBLE, WHEREVER SITUATED, THAT CONSTITUTE:

1           **(1) THE NET PROBATE ESTATE OF THE DECEDENT;**

2           **(2) THE NONPROBATE TRANSFERS BY THE DECEDENT TO**  
 3 **OTHERS;**

4           **(3) THE NONPROBATE TRANSFERS BY THE DECEDENT TO THE**  
 5 **SURVIVING SPOUSE; AND**

6           **(4) THE PROPERTY AND NONPROBATE TRANSFERS BY THE**  
 7 **SURVIVING SPOUSE TO OTHERS.**

8           **(B) THE VALUE OF THE MARITAL PROPERTY PORTION OF THE**  
 9 **AUGMENTED ESTATE CONSISTS OF THE SUM OF THE VALUES OF THE FOUR**  
 10 **COMPONENTS OF THE AUGMENTED ESTATE AS DETERMINED UNDER**  
 11 **SUBSECTION (A) OF THIS SECTION MULTIPLIED BY THE FOLLOWING**  
 12 **PERCENTAGE:**

13 **IF THE DECEDENT AND THE SPOUSE           THE PERCENTAGE IS:**  
 14 **WERE MARRIED TO EACH OTHER:**

15	<b>LESS THAN 1 YEAR</b>	<b>3%</b>
16	<b>1 YEAR BUT LESS THAN 2 YEARS</b>	<b>6%</b>
17	<b>2 YEARS BUT LESS THAN 3 YEARS</b>	<b>12%</b>
18	<b>3 YEARS BUT LESS THAN 4 YEARS</b>	<b>18%</b>
19	<b>4 YEARS BUT LESS THAN 5 YEARS</b>	<b>24%</b>
20	<b>5 YEARS BUT LESS THAN 6 YEARS</b>	<b>30%</b>
21	<b>6 YEARS BUT LESS THAN 7 YEARS</b>	<b>36%</b>
22	<b>7 YEARS BUT LESS THAN 8 YEARS</b>	<b>42%</b>
23	<b>8 YEARS BUT LESS THAN 9 YEARS</b>	<b>48%</b>
24	<b>9 YEARS BUT LESS THAN 10 YEARS</b>	<b>54%</b>
25	<b>10 YEARS BUT LESS THAN 11 YEARS</b>	<b>60%</b>
26	<b>11 YEARS BUT LESS THAN 12 YEARS</b>	<b>68%</b>

1	<b>12 YEARS BUT LESS THAN 13 YEARS</b>	<b>76%</b>
2	<b>13 YEARS BUT LESS THAN 14 YEARS</b>	<b>84%</b>
3	<b>14 YEARS BUT LESS THAN 15 YEARS</b>	<b>92%</b>
4	<b>15 YEARS OR MORE</b>	<b>100%</b>

5 **3-404.**

6 **THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE**  
 7 **PROBATE ESTATE OF THE DECEDENT, REDUCED BY FUNERAL AND**  
 8 **ADMINISTRATION EXPENSES, HOMESTEAD ALLOWANCE, FAMILY ALLOWANCE,**  
 9 **EXEMPT PROPERTY, AND ENFORCEABLE CLAIMS.**

10 **3-405.**

11 **THE VALUE OF THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE**  
 12 **NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS, NOT INCLUDED**  
 13 **UNDER § 3-404 OF THIS SUBTITLE, OF ANY OF THE FOLLOWING TYPES, IN THE**  
 14 **AMOUNT PROVIDED RESPECTIVELY FOR EACH TYPE OF TRANSFER:**

15 **(1) PROPERTY OWNED OR OWNED IN SUBSTANCE BY THE**  
 16 **DECEDENT IMMEDIATELY BEFORE DEATH THAT PASSED OUTSIDE PROBATE AT**  
 17 **THE DEATH OF THE DECEDENT, INCLUDING:**

18 **(i) 1. PROPERTY OVER WHICH THE DECEDENT ALONE,**  
 19 **IMMEDIATELY BEFORE DEATH, HELD A PRESENTLY EXERCISABLE GENERAL**  
 20 **POWER OF APPOINTMENT; AND**

21 **2. THE VALUE OF THE PROPERTY SUBJECT TO THE**  
 22 **POWER, TO THE EXTENT THE PROPERTY PASSED AT THE DEATH OF THE**  
 23 **DECEDENT, BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE, TO OR**  
 24 **FOR THE BENEFIT OF ANY PERSON OTHER THAN THE ESTATE OF THE DECEDENT**  
 25 **OR SURVIVING SPOUSE OF THE DECEDENT.**

26 **(ii) 1. THE FRACTIONAL INTEREST OF THE DECEDENT**  
 27 **IN PROPERTY HELD BY THE DECEDENT IN JOINT TENANCY WITH THE RIGHT OF**  
 28 **SURVIVORSHIP; AND**

29 **2. THE VALUE OF THE FRACTIONAL INTEREST OF**  
 30 **THE DECEDENT, TO THE EXTENT THE FRACTIONAL INTEREST PASSED BY RIGHT**

1 OF SURVIVORSHIP AT THE DEATH OF THE DECEDENT TO A SURVIVING JOINT  
2 TENANT OTHER THAN THE SURVIVING SPOUSE OF THE DECEDENT.

3 (III) 1. THE OWNERSHIP INTEREST OF THE DECEDENT IN  
4 PROPERTY OR ACCOUNTS HELD IN PAID ON DEATH OR TRANSFER ON DEATH OR  
5 CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF SURVIVORSHIP; AND

6 2. THE VALUE OF THE OWNERSHIP INTEREST OF  
7 THE DECEDENT, TO THE EXTENT THE OWNERSHIP INTEREST OF THE DECEDENT  
8 PASSED AT THE DEATH OF THE DECEDENT TO OR FOR THE BENEFIT OF ANY  
9 PERSON OTHER THAN THE ESTATE OF THE DECEDENT OR SURVIVING SPOUSE  
10 OF THE DECEDENT.

11 (IV) 1. PROCEEDS OF INSURANCE, INCLUDING  
12 ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE DECEDENT, IF THE  
13 DECEDENT OWNED THE INSURANCE POLICY IMMEDIATELY BEFORE DEATH OR  
14 IF AND TO THE EXTENT THE DECEDENT ALONE AND IMMEDIATELY BEFORE  
15 DEATH HELD A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT  
16 OVER THE POLICY OR THE PROCEEDS OF THE POLICY; AND

17 2. THE VALUE OF THE PROCEEDS, TO THE EXTENT  
18 THE PROCEEDS WERE PAYABLE AT THE DEATH OF THE DECEDENT TO OR FOR  
19 THE BENEFIT OF A PERSON OTHER THAN THE ESTATE OF THE DECEDENT OR  
20 SURVIVING SPOUSE OF THE DECEDENT.

21 (2) PROPERTY TRANSFERRED IN ANY OF THE FOLLOWING FORMS  
22 BY THE DECEDENT DURING MARRIAGE:

23 (I) 1. AN IRREVOCABLE TRANSFER IN WHICH THE  
24 DECEDENT RETAINED THE RIGHT TO THE POSSESSION OR ENJOYMENT OF, OR  
25 TO THE INCOME FROM, THE PROPERTY IF AND TO THE EXTENT THE RIGHT OF  
26 THE DECEDENT TERMINATED AT OR CONTINUED BEYOND THE DEATH OF THE  
27 DECEDENT; AND

28 2. THE VALUE OF THE FRACTION OF THE PROPERTY  
29 TO WHICH THE RIGHT OF THE DECEDENT RELATED, TO THE EXTENT THE  
30 FRACTION OF THE PROPERTY PASSED OUTSIDE PROBATE TO OR FOR THE  
31 BENEFIT OF A PERSON OTHER THAN THE ESTATE OF THE DECEDENT OR  
32 SURVIVING SPOUSE OF THE DECEDENT.

33 (II) 1. A TRANSFER IN WHICH THE DECEDENT CREATED  
34 A POWER OVER INCOME OR PROPERTY, EXERCISABLE BY THE DECEDENT ALONE  
35 OR IN CONJUNCTION WITH ANOTHER PERSON, OR EXERCISABLE BY A

1 NONADVERSE PARTY, TO OR FOR THE BENEFIT OF THE DECEDENT, CREDITORS  
2 OF THE DECEDENT, THE ESTATE OF THE DECEDENT, OR CREDITORS OF THE  
3 ESTATE OF THE DECEDENT;

4           2. WITH RESPECT TO A POWER OVER PROPERTY,  
5 THE VALUE OF THE PROPERTY SUBJECT TO THE POWER, AND THE AMOUNT  
6 INCLUDED WITH RESPECT TO A POWER OVER INCOME IS THE VALUE OF THE  
7 PROPERTY THAT PRODUCES OR PRODUCED THE INCOME, TO THE EXTENT THE  
8 POWER IN EITHER CASE WAS EXERCISABLE AT THE DEATH OF THE DECEDENT  
9 TO OR FOR THE BENEFIT OF A PERSON OTHER THAN THE SURVIVING SPOUSE OF  
10 THE DECEDENT OR TO THE EXTENT THE PROPERTY PASSED AT THE DEATH OF  
11 THE DECEDENT, BY EXERCISE, RELEASE, LAPSE, IN DEFAULT, OR OTHERWISE,  
12 TO OR FOR THE BENEFIT OF A PERSON OTHER THAN THE ESTATE OF THE  
13 DECEDENT OR SURVIVING SPOUSE OF THE DECEDENT; AND

14           3. IF THE POWER IS A POWER OVER BOTH INCOME  
15 AND PROPERTY AND THE RESULT OF APPLYING SUBPARAGRAPH 2 OF THIS  
16 PARAGRAPH PRODUCES DIFFERENT AMOUNTS, THE AMOUNT INCLUDED IS THE  
17 GREATER AMOUNT.

18           (3) PROPERTY THAT PASSED DURING MARRIAGE AND DURING  
19 THE 2-YEAR PERIOD NEXT PRECEDING THE DEATH OF THE DECEDENT AS A  
20 RESULT OF A TRANSFER BY THE DECEDENT IF THE TRANSFER WAS ONE OF THE  
21 FOLLOWING TYPES:

22           (i) 1. PROPERTY THAT PASSED AS A RESULT OF THE  
23 TERMINATION OF A RIGHT OR INTEREST IN, OR POWER OVER, PROPERTY THAT  
24 WOULD HAVE BEEN INCLUDED IN THE AUGMENTED ESTATE UNDER PARAGRAPH  
25 (1)(I), (II), OR (III) OF THIS SECTION, OR UNDER PARAGRAPH (2) OF THIS  
26 SECTION, IF THE RIGHT, INTEREST, OR POWER HAD NOT TERMINATED UNTIL  
27 THE DEATH OF THE DECEDENT; AND

28           2. THE VALUE OF THE PROPERTY THAT WOULD  
29 HAVE BEEN INCLUDED UNDER THOSE PARAGRAPHS IF THE PROPERTY WERE  
30 VALUED AT THE TIME THE RIGHT, INTEREST, OR POWER TERMINATED, AND IS  
31 INCLUDED ONLY TO THE EXTENT THE PROPERTY PASSED ON TERMINATION TO  
32 OR FOR THE BENEFIT OF A PERSON OTHER THAN THE DECEDENT OR THE  
33 ESTATE, SPOUSE, OR SURVIVING SPOUSE OF THE DECEDENT.

34           3. AS USED IN THIS SUBPARAGRAPH,  
35 "TERMINATION", WITH RESPECT TO A RIGHT OR INTEREST IN PROPERTY,  
36 OCCURS WHEN THE RIGHT OR INTEREST TERMINATED BY THE TERMS OF THE  
37 GOVERNING INSTRUMENT OR THE DECEDENT TRANSFERRED OR RELINQUISHED

1 THE RIGHT OR INTEREST, AND, WITH RESPECT TO A POWER OVER PROPERTY,  
2 OCCURS WHEN THE POWER TERMINATED BY EXERCISE, RELEASE, LAPSE,  
3 DEFAULT, OR OTHERWISE, BUT, WITH RESPECT TO A POWER DESCRIBED IN  
4 PARAGRAPH (1)(I) OF THIS SECTION, "TERMINATION" OCCURS WHEN THE  
5 POWER IS TERMINATED BY EXERCISE OR RELEASE, BUT NOT OTHERWISE.

6 (II) 1. A TRANSFER OF OR RELATING TO AN INSURANCE  
7 POLICY ON THE LIFE OF THE DECEDENT IF THE PROCEEDS WOULD HAVE BEEN  
8 INCLUDED IN THE AUGMENTED ESTATE UNDER PARAGRAPH (1)(IV) OF THIS  
9 SECTION HAD THE TRANSFER NOT OCCURRED; AND

10 2. THE VALUE OF THE INSURANCE PROCEEDS TO  
11 THE EXTENT THE PROCEEDS WERE PAYABLE AT THE DEATH OF THE DECEDENT  
12 TO OR FOR THE BENEFIT OF A PERSON OTHER THAN THE ESTATE OF THE  
13 DECEDENT OR SURVIVING SPOUSE.

14 (III) 1. A TRANSFER OF PROPERTY, TO THE EXTENT NOT  
15 OTHERWISE INCLUDED IN THE AUGMENTED ESTATE, MADE TO OR FOR THE  
16 BENEFIT OF A PERSON OTHER THAN THE SURVIVING SPOUSE; AND

17 2. THE VALUE OF THE TRANSFERRED PROPERTY TO  
18 THE EXTENT THE AGGREGATE TRANSFERS TO A DONEE IN EITHER OF THE 2  
19 YEARS EXCEEDED \$12,000.

20 3-406.

21 EXCLUDING PROPERTY PASSING TO THE SURVIVING SPOUSE OF THE  
22 DECEDENT UNDER THE FEDERAL SOCIAL SECURITY SYSTEM, THE VALUE OF  
23 THE AUGMENTED ESTATE INCLUDES THE VALUE OF THE NONPROBATE  
24 TRANSFERS BY THE DECEDENT TO THE SURVIVING SPOUSE, WHICH CONSIST OF  
25 ALL PROPERTY THAT PASSED OUTSIDE PROBATE AT THE DEATH OF THE  
26 DECEDENT FROM THE DECEDENT TO THE SURVIVING SPOUSE OF THE  
27 DECEDENT BY REASON OF THE DEATH OF THE DECEDENT, INCLUDING:

28 (1) THE FRACTIONAL INTEREST OF THE DECEDENT IN PROPERTY  
29 HELD AS A JOINT TENANT WITH THE RIGHT OF SURVIVORSHIP, TO THE EXTENT  
30 THAT THE FRACTIONAL INTEREST OF THE DECEDENT PASSED TO THE  
31 SURVIVING SPOUSE AS SURVIVING JOINT TENANT;

32 (2) THE OWNERSHIP INTEREST OF THE DECEDENT IN PROPERTY  
33 OR ACCOUNTS HELD IN CO-OWNERSHIP REGISTRATION WITH THE RIGHT OF  
34 SURVIVORSHIP, TO THE EXTENT THE OWNERSHIP INTEREST OF THE DECEDENT  
35 PASSED TO THE SURVIVING SPOUSE AS SURVIVING CO-OWNER; AND

1           **(3) ALL OTHER PROPERTY THAT WOULD HAVE BEEN INCLUDED**  
2 **IN THE AUGMENTED ESTATE UNDER § 3-405(1) OR (2) OF THIS SUBTITLE HAD**  
3 **THE PROPERTY PASSED TO OR FOR THE BENEFIT OF A PERSON OTHER THAN**  
4 **THE SPOUSE OF THE DECEDENT, SURVIVING SPOUSE, THE DECEDENT, OR THE**  
5 **CREDITORS, ESTATE, OR ESTATE CREDITORS OF THE DECEDENT.**

6 **3-407.**

7           **(A) EXCEPT TO THE EXTENT INCLUDED IN THE AUGMENTED ESTATE**  
8 **UNDER § 3-404 OR § 3-406 OF THIS SUBTITLE, THE VALUE OF THE AUGMENTED**  
9 **ESTATE INCLUDES THE VALUE OF:**

10           **(1) PROPERTY THAT WAS OWNED BY THE SURVIVING SPOUSE OF**  
11 **THE DECEDENT AT THE DEATH OF THE DECEDENT, INCLUDING:**

12                   **(I) THE FRACTIONAL INTEREST OF THE SURVIVING SPOUSE**  
13 **OF THE DECEDENT IN PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF**  
14 **SURVIVORSHIP;**

15                   **(II) THE OWNERSHIP INTEREST OF THE SURVIVING SPOUSE**  
16 **OF THE DECEDENT IN PROPERTY OR ACCOUNTS HELD IN CO-OWNERSHIP**  
17 **REGISTRATION WITH THE RIGHT OF SURVIVORSHIP; AND**

18                   **(III) PROPERTY THAT PASSED TO THE SURVIVING SPOUSE**  
19 **OF THE DECEDENT BY REASON OF THE DEATH OF THE DECEDENT, BUT NOT**  
20 **INCLUDING THE RIGHT TO HOMESTEAD ALLOWANCE, FAMILY ALLOWANCE,**  
21 **EXEMPT PROPERTY, OR PAYMENTS UNDER THE FEDERAL SOCIAL SECURITY**  
22 **SYSTEM OF THE SURVIVING SPOUSE OF THE DECEDENT; AND**

23           **(2) PROPERTY THAT WOULD HAVE BEEN INCLUDED IN THE**  
24 **NONPROBATE TRANSFERS BY THE SURVIVING SPOUSE TO OTHERS, OTHER THAN**  
25 **THE FRACTIONAL AND OWNERSHIP INTERESTS OF THE SPOUSE INCLUDED**  
26 **UNDER SUBSECTION (A)(1)(I) OR (II) OF THIS SECTION, HAD THE SPOUSE BEEN**  
27 **THE DECEDENT.**

28           **(B) (1) PROPERTY INCLUDED UNDER THIS SECTION IS VALUED AT**  
29 **THE DEATH OF THE DECEDENT, TAKING THE FACT THAT THE DECEDENT**  
30 **PREDECEASED THE SPOUSE INTO ACCOUNT, BUT, FOR PURPOSES OF**  
31 **SUBSECTION (A)(1)(I) AND (II) OF THIS SECTION, THE VALUES OF THE**  
32 **FRACTIONAL AND OWNERSHIP INTERESTS OF THE SPOUSE ARE DETERMINED**  
33 **IMMEDIATELY BEFORE THE DEATH OF THE DECEDENT IF THE DECEDENT WAS**  
34 **THEN A JOINT TENANT OR A CO-OWNER OF THE PROPERTY OR ACCOUNTS.**

1           **(2) FOR PURPOSES OF SUBSECTION (A)(2) OF THIS SECTION,**  
2 **PROCEEDS OF INSURANCE THAT WOULD HAVE BEEN INCLUDED IN THE**  
3 **NONPROBATE TRANSFERS BY THE SPOUSE TO OTHERS UNDER § 3-405(1)(IV) OF**  
4 **THIS SUBTITLE ARE NOT VALUED AS IF THE SPOUSE WAS DECEASED.**

5           **(C) THE VALUE OF PROPERTY INCLUDED UNDER THIS SECTION IS**  
6 **REDUCED BY ENFORCEABLE CLAIMS AGAINST THE SURVIVING SPOUSE.**

7 **3-408.**

8           **(A) THE VALUE OF PROPERTY IS EXCLUDED FROM THE NONPROBATE**  
9 **TRANSFERS BY THE DECEDENT TO OTHERS:**

10           **(1) TO THE EXTENT THE DECEDENT RECEIVED ADEQUATE AND**  
11 **FULL CONSIDERATION IN MONEY OR EQUIVALENT CONSIDERATION FOR A**  
12 **TRANSFER OF THE PROPERTY; OR**

13           **(2) IF THE PROPERTY WAS TRANSFERRED WITH THE WRITTEN**  
14 **JOINDER OF, OR IF THE TRANSFER WAS CONSENTED TO IN WRITING BEFORE OR**  
15 **AFTER THE TRANSFER BY, THE SURVIVING SPOUSE.**

16           **(B) THE VALUE OF PROPERTY INCLUDED IN THE AUGMENTED ESTATE**  
17 **UNDER § 3-405, § 3-406, OR § 3-407 OF THIS SUBTITLE:**

18           **(1) IS REDUCED IN EACH CATEGORY BY ENFORCEABLE CLAIMS**  
19 **AGAINST THE INCLUDED PROPERTY; AND**

20           **(2) INCLUDES THE COMMUTED VALUE OF PRESENT OR FUTURE**  
21 **INTEREST AND THE COMMUTED VALUE OF AMOUNTS PAYABLE UNDER A TRUST,**  
22 **LIFE INSURANCE SETTLEMENT OPTION, ANNUITY CONTRACT, PUBLIC OR**  
23 **PRIVATE PENSION, DISABILITY COMPENSATION, DEATH BENEFIT OR**  
24 **RETIREMENT PLAN, OR SIMILAR ARRANGEMENT, EXCLUSIVE OF THE FEDERAL**  
25 **SOCIAL SECURITY SYSTEM.**

26           **(C) IN CASE OF OVERLAPPING APPLICATION TO THE SAME PROPERTY**  
27 **OF THE PARAGRAPHS OR SUBPARAGRAPHS OF § 3-405, § 3-406, OR § 3-407 OF**  
28 **THIS SUBTITLE, THE PROPERTY IS INCLUDED IN THE AUGMENTED ESTATE**  
29 **UNDER THE PROVISION YIELDING THE GREATEST VALUE, AND UNDER ONLY ONE**  
30 **OVERLAPPING PROVISION IF ALL THE PROPERTY YIELDS THE SAME VALUE.**

31 **3-409.**

1           **(A) IN A PROCEEDING FOR AN ELECTIVE SHARE, THE FOLLOWING ARE**  
2 **APPLIED FIRST TO SATISFY THE ELECTIVE SHARE AMOUNT AND TO REDUCE OR**  
3 **ELIMINATE CONTRIBUTIONS DUE FROM THE PROBATE ESTATE OF THE**  
4 **DECEDENT AND RECIPIENTS OF THE NONPROBATE TRANSFERS BY THE**  
5 **DECEDENT TO OTHERS:**

6           **(1) AMOUNTS INCLUDED IN THE AUGMENTED ESTATE UNDER §**  
7 **3-404 OF THIS SUBTITLE WHICH PASS OR HAVE PASSED TO THE SURVIVING**  
8 **SPOUSE BY TESTATE OR INTESTATE SUCCESSION AND AMOUNTS INCLUDED IN**  
9 **THE AUGMENTED ESTATE UNDER § 3-406 OF THIS SUBTITLE; AND**

10           **(2) THE MARITAL PROPERTY PORTION OF AMOUNTS INCLUDED IN**  
11 **THE AUGMENTED ESTATE UNDER § 3-407 OF THIS SUBTITLE.**

12           **(B) THE MARITAL PROPERTY PORTION UNDER SUBSECTION (A)(2) OF**  
13 **THIS SECTION IS COMPUTED BY MULTIPLYING THE VALUE OF THE AMOUNTS**  
14 **INCLUDED IN THE AUGMENTED ESTATE UNDER § 3-407 OF THIS SUBTITLE BY**  
15 **THE PERCENTAGE OF THE AUGMENTED ESTATE SET FORTH IN THE SCHEDULE**  
16 **IN § 3-403(B) OF THIS SUBTITLE APPROPRIATE TO THE LENGTH OF TIME THE**  
17 **SPOUSE AND THE DECEDENT WERE MARRIED TO EACH OTHER.**

18           **(C) (1) IF, AFTER THE APPLICATION OF SUBSECTION (A) OF THIS**  
19 **SECTION, THE ELECTIVE SHARE AMOUNT IS NOT FULLY SATISFIED, OR THE**  
20 **SURVIVING SPOUSE IS ENTITLED TO A SUPPLEMENTAL ELECTIVE SHARE**  
21 **AMOUNT, AMOUNTS INCLUDED IN THE NET PROBATE ESTATE OF THE**  
22 **DECEDENT, OTHER THAN ASSETS PASSING TO THE SURVIVING SPOUSE BY**  
23 **TESTATE OR INTESTATE SUCCESSION, AND IN THE NONPROBATE TRANSFERS BY**  
24 **THE DECEDENT TO OTHERS UNDER § 3-405(1), (2), AND (3)(II) OF THIS**  
25 **SUBTITLE ARE APPLIED FIRST TO SATISFY THE UNSATISFIED BALANCE OF THE**  
26 **ELECTIVE SHARE AMOUNT OR THE SUPPLEMENTAL ELECTIVE SHARE AMOUNT.**

27           **(2) THE NET PROBATE ESTATE OF THE DECEDENT AND THAT**  
28 **PORTION OF THE NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS ARE**  
29 **SO APPLIED THAT LIABILITY FOR THE UNSATISFIED BALANCE OF THE ELECTIVE**  
30 **SHARE AMOUNT OR FOR THE SUPPLEMENTAL ELECTIVE SHARE AMOUNT IS**  
31 **APPORTIONED AMONG THE RECIPIENTS OF THE NET PROBATE ESTATE OF THE**  
32 **DECEDENT AND OF THAT PORTION OF THE NONPROBATE TRANSFERS BY THE**  
33 **DECEDENT TO OTHERS IN PROPORTION TO THE VALUE OF THE INTERESTS OF**  
34 **THE OTHERS IN THE TRANSFERS.**

35           **(D) IF, AFTER THE APPLICATION OF SUBSECTIONS (A) AND (C) OF THIS**  
36 **SECTION, THE ELECTIVE SHARE OR SUPPLEMENTAL ELECTIVE SHARE AMOUNT**  
37 **IS NOT FULLY SATISFIED, THE REMAINING PORTION OF THE NONPROBATE**

1 TRANSFERS BY THE DECEDENT TO OTHERS IS SO APPLIED THAT LIABILITY FOR  
2 THE UNSATISFIED BALANCE OF THE ELECTIVE SHARE OR SUPPLEMENTAL  
3 ELECTIVE SHARE AMOUNT IS APPORTIONED AMONG THE RECIPIENTS OF THE  
4 REMAINING PORTION OF THE NONPROBATE TRANSFERS BY THE DECEDENT TO  
5 OTHERS IN PROPORTION TO THE VALUE OF THE INTERESTS OF THE OTHERS IN  
6 THE TRANSFERS.

7 (E) THE UNSATISFIED BALANCE OF THE ELECTIVE SHARE OR  
8 SUPPLEMENTAL ELECTIVE SHARE AMOUNT AS DETERMINED UNDER  
9 SUBSECTION (C) OR (D) OF THIS SECTION IS TREATED AS A GENERAL  
10 PECUNIARY DEVISE FOR PURPOSES OF THIS ARTICLE.

11 **3-410.**

12 (A) (1) ONLY ORIGINAL RECIPIENTS OF THE NONPROBATE  
13 TRANSFERS BY THE DECEDENT TO OTHERS, AND THE DONEES OF THE  
14 RECIPIENTS OF THE NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS,  
15 TO THE EXTENT THE DONEES HAVE THE PROPERTY OR THE PROCEEDS FROM  
16 THE PROPERTY, ARE LIABLE TO MAKE A PROPORTIONAL CONTRIBUTION  
17 TOWARD SATISFACTION OF THE ELECTIVE SHARE OF THE SURVIVING SPOUSE  
18 OR SUPPLEMENTAL ELECTIVE SHARE AMOUNT.

19 (2) A PERSON LIABLE TO MAKE CONTRIBUTION MAY CHOOSE TO  
20 GIVE UP THE PROPORTIONAL PART OF THE NONPROBATE TRANSFERS BY THE  
21 DECEDENT TO THAT PERSON OR TO PAY THE VALUE OF THE AMOUNT FOR  
22 WHICH THAT PERSON IS LIABLE.

23 (B) IF A SECTION OR PART OF A SECTION OF THIS SUBTITLE IS  
24 PREEMPTED BY FEDERAL LAW WITH RESPECT TO A PAYMENT, AN ITEM OF  
25 PROPERTY, OR OTHER BENEFIT INCLUDED IN THE NONPROBATE TRANSFERS BY  
26 THE DECEDENT TO OTHERS, A PERSON WHO, NOT FOR VALUE, RECEIVES THE  
27 PAYMENT, ITEM OF PROPERTY, OR OTHER BENEFIT IS OBLIGATED TO RETURN  
28 THE PAYMENT, ITEM OF PROPERTY, OR BENEFIT, OR IS PERSONALLY LIABLE  
29 FOR THE AMOUNT OF THE PAYMENT OR THE VALUE OF THAT ITEM OF  
30 PROPERTY OR BENEFIT, AS PROVIDED IN § 3-409 OF THIS SUBTITLE, TO THE  
31 PERSON WHO WOULD HAVE BEEN ENTITLED TO THE BENEFIT WERE THAT  
32 SECTION OR PART OF THAT SECTION OF THIS SUBTITLE NOT PREEMPTED BY  
33 FEDERAL LAW.

34 **3-411.**

35 (A) (1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,  
36 THE ELECTION SHALL BE MADE BY FILING IN THE COURT AND MAILING OR

1 DELIVERING TO THE PERSONAL REPRESENTATIVE, IF ANY, A PETITION FOR THE  
2 ELECTIVE SHARE WITHIN 9 MONTHS AFTER THE DATE OF THE DEATH OF THE  
3 DECEDENT, OR WITHIN 6 MONTHS AFTER THE PROBATE OF THE WILL OF THE  
4 DECEDENT, WHICHEVER LIMITATION LATER EXPIRES.

5 (2) THE SURVIVING SPOUSE SHALL GIVE NOTICE OF THE TIME  
6 AND PLACE SET FOR HEARING TO PERSONS INTERESTED IN THE ESTATE AND TO  
7 THE DISTRIBUTEES AND RECIPIENTS OF PORTIONS OF THE AUGMENTED ESTATE  
8 WHOSE INTERESTS WILL BE ADVERSELY AFFECTED BY THE TAKING OF THE  
9 ELECTIVE SHARE.

10 (3) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,  
11 THE NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS ARE NOT  
12 INCLUDED WITHIN THE AUGMENTED ESTATE FOR THE PURPOSE OF COMPUTING  
13 THE ELECTIVE SHARE, IF THE PETITION IS FILED MORE THAN 9 MONTHS AFTER  
14 THE DEATH OF THE DECEDENT.

15 (B) (1) WITHIN 9 MONTHS AFTER THE DEATH OF THE DECEDENT,  
16 THE SURVIVING SPOUSE MAY PETITION THE COURT FOR AN EXTENSION OF TIME  
17 FOR MAKING AN ELECTION.

18 (2) IF, WITHIN 9 MONTHS AFTER THE DEATH OF THE DECEDENT,  
19 THE SPOUSE GIVES NOTICE OF THE PETITION TO ALL PERSONS INTERESTED IN  
20 THE NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS, THE COURT FOR  
21 CAUSE SHOWN BY THE SURVIVING SPOUSE MAY EXTEND THE TIME FOR  
22 ELECTION.

23 (3) IF THE COURT GRANTS THE PETITION OF THE SURVIVING  
24 SPOUSE FOR AN EXTENSION, THE NONPROBATE TRANSFERS BY THE DECEDENT  
25 TO OTHERS ARE NOT EXCLUDED FROM THE AUGMENTED ESTATE FOR THE  
26 PURPOSE OF COMPUTING THE ELECTIVE SHARE AND SUPPLEMENTAL ELECTIVE  
27 SHARE AMOUNTS, IF THE SPOUSE MAKES AN ELECTION BY FILING IN THE COURT  
28 AND MAILING OR DELIVERING TO THE PERSONAL REPRESENTATIVE, IF ANY, A  
29 PETITION FOR THE ELECTIVE SHARE WITHIN THE TIME ALLOWED BY THE  
30 EXTENSION.

31 (C) THE SURVIVING SPOUSE MAY WITHDRAW THE DEMAND OF THE  
32 SURVIVING SPOUSE FOR AN ELECTIVE SHARE AT ANY TIME BEFORE ENTRY OF A  
33 FINAL DETERMINATION BY THE COURT.

34 (D) (1) AFTER NOTICE AND HEARING, THE COURT SHALL DETERMINE  
35 THE ELECTIVE SHARE AND SUPPLEMENTAL ELECTIVE SHARE AMOUNTS, AND  
36 SHALL ORDER THE PAYMENT OF THE AMOUNTS FROM THE ASSETS OF THE

1 AUGMENTED ESTATE OR BY CONTRIBUTION AS APPEARS APPROPRIATE UNDER  
2 §§ 3-409 AND 3-410 OF THIS SUBTITLE.

3 (2) IF IT APPEARS THAT A FUND OR PROPERTY INCLUDED IN THE  
4 AUGMENTED ESTATE HAS NOT COME INTO THE POSSESSION OF THE PERSONAL  
5 REPRESENTATIVE, OR HAS BEEN DISTRIBUTED BY THE PERSONAL  
6 REPRESENTATIVE, THE COURT SHALL FIX THE LIABILITY OF A PERSON WHO HAS  
7 AN INTEREST IN THE FUND OR PROPERTY OR WHO HAS POSSESSION OF THE  
8 INTEREST, WHETHER AS TRUSTEE OR OTHERWISE.

9 (3) THE PROCEEDING MAY BE MAINTAINED AGAINST FEWER  
10 THAN ALL PERSONS AGAINST WHOM RELIEF COULD BE SOUGHT, BUT NO  
11 PERSON IS SUBJECT TO CONTRIBUTION IN A GREATER AMOUNT THAN THAT  
12 PERSON WOULD HAVE BEEN UNDER §§ 3-409 AND 3-410 OF THIS SUBTITLE HAD  
13 RELIEF BEEN SECURED AGAINST ALL PERSONS SUBJECT TO CONTRIBUTION.

14 (E) AN ORDER OR JUDGMENT OF THE COURT MAY BE ENFORCED AS  
15 NECESSARY IN SUIT FOR CONTRIBUTION OR PAYMENT IN OTHER COURTS OF  
16 THIS STATE OR OTHER JURISDICTIONS.

17 3-412.

18 (A) (1) THE RIGHT OF ELECTION MAY BE EXERCISED ONLY BY A  
19 SURVIVING SPOUSE WHO IS LIVING WHEN THE PETITION FOR THE ELECTIVE  
20 SHARE IS FILED IN THE COURT UNDER § 3-411(A) OF THIS SUBTITLE.

21 (2) IF THE ELECTION IS NOT EXERCISED BY THE SURVIVING  
22 SPOUSE PERSONALLY, THE ELECTION MAY BE EXERCISED ON BEHALF OF THE  
23 SURVIVING SPOUSE BY THE CONSERVATOR, GUARDIAN, OR AGENT OF THE  
24 SURVIVING SPOUSE UNDER THE AUTHORITY OF A POWER OF ATTORNEY.

25 (B) (1) IF THE ELECTION IS EXERCISED ON BEHALF OF A SURVIVING  
26 SPOUSE WHO IS AN INCAPACITATED PERSON, THE COURT SHALL SET ASIDE  
27 THAT PORTION OF THE ELECTIVE SHARE AND SUPPLEMENTAL ELECTIVE SHARE  
28 AMOUNTS DUE FROM THE PROBATE ESTATE OF THE DECEDENT AND  
29 RECIPIENTS OF THE NONPROBATE TRANSFERS BY THE DECEDENT TO OTHERS  
30 UNDER § 3-409(C) AND (D) OF THIS SUBTITLE AND SHALL APPOINT A TRUSTEE  
31 TO ADMINISTER THAT PROPERTY FOR THE SUPPORT OF THE SURVIVING  
32 SPOUSE.

33 (2) (I) FOR THE PURPOSES OF THIS SUBSECTION, AN  
34 ELECTION ON BEHALF OF A SURVIVING SPOUSE BY AN AGENT UNDER A

1 DURABLE POWER OF ATTORNEY IS PRESUMED TO BE ON BEHALF OF A  
2 SURVIVING SPOUSE WHO IS AN INCAPACITATED PERSON.

3 (II) THE TRUSTEE SHALL ADMINISTER THE TRUST IN  
4 ACCORDANCE WITH THE FOLLOWING TERMS AND SUCH ADDITIONAL TERMS AS  
5 THE COURT DETERMINES APPROPRIATE:

6 1. EXPENDITURES OF INCOME AND PRINCIPAL MAY  
7 BE MADE IN THE MANNER, WHEN, AND TO THE EXTENT THAT THE TRUSTEE  
8 DETERMINES SUITABLE AND PROPER FOR THE SUPPORT OF THE SURVIVING  
9 SPOUSE, WITHOUT COURT ORDER BUT WITH REGARD TO OTHER SUPPORT,  
10 INCOME, AND PROPERTY OF THE SURVIVING SPOUSE EXCLUSIVE OF BENEFITS  
11 OF MEDICAL OR OTHER FORMS OF ASSISTANCE FROM A STATE OR FEDERAL  
12 GOVERNMENT OR GOVERNMENTAL AGENCY FOR WHICH THE SURVIVING SPOUSE  
13 MUST QUALIFY ON THE BASIS OF NEED;

14 2. DURING THE INCAPACITY OF THE SURVIVING  
15 SPOUSE, NEITHER THE SURVIVING SPOUSE NOR ANYONE ACTING ON BEHALF OF  
16 THE SURVIVING SPOUSE HAS A POWER TO TERMINATE THE TRUST; AND

17 3. IF THE SURVIVING SPOUSE REGAINS CAPACITY,  
18 THE SURVIVING SPOUSE THEN ACQUIRES THE POWER TO TERMINATE THE  
19 TRUST AND ACQUIRE FULL OWNERSHIP OF THE TRUST PROPERTY FREE OF  
20 TRUST, BY DELIVERING TO THE TRUSTEE A WRITING SIGNED BY THE SURVIVING  
21 SPOUSE DECLARING THE TERMINATION.

22 (III) ON THE SURVIVING SPOUSE'S DEATH, THE TRUSTEE  
23 SHALL TRANSFER THE UNEXPENDED TRUST PROPERTY IN THE FOLLOWING  
24 ORDER:

25 1. UNDER THE RESIDUARY CLAUSE, IF ANY, OF THE  
26 WILL OF THE PREDECEASED SPOUSE AGAINST WHOM THE ELECTIVE SHARE WAS  
27 TAKEN, AS IF THAT PREDECEASED SPOUSE DIED IMMEDIATELY AFTER THE  
28 SURVIVING SPOUSE; OR THEN

29 2. TO THE PREDECEASED SPOUSE'S HEIRS UNDER §  
30 3-411 OF THIS SUBTITLE.

31 3-413.

32 (A) THE RIGHT OF ELECTION OF A SURVIVING SPOUSE AND THE RIGHTS  
33 OF THE SURVIVING SPOUSE TO HOMESTEAD ALLOWANCE, EXEMPT PROPERTY,  
34 AND FAMILY ALLOWANCE, OR ANY OF THEM, MAY BE WAIVED, WHOLLY OR

1 PARTIALLY, BEFORE OR AFTER MARRIAGE, BY A WRITTEN CONTRACT,  
2 AGREEMENT, OR WAIVER SIGNED BY THE SURVIVING SPOUSE.

3 (B) A WAIVER BY A SURVIVING SPOUSE IS NOT ENFORCEABLE IF THE  
4 SURVIVING SPOUSE PROVES THAT:

5 (1) THE SURVIVING SPOUSE DID NOT EXECUTE THE WAIVER  
6 VOLUNTARILY; OR

7 (2) THE WAIVER WAS UNCONSCIONABLE WHEN THE WAIVER WAS  
8 EXECUTED AND, BEFORE EXECUTION OF THE WAIVER, THE SURVIVING SPOUSE:

9 (I) WAS NOT PROVIDED A FAIR AND REASONABLE  
10 DISCLOSURE OF THE PROPERTY OR FINANCIAL OBLIGATIONS OF THE  
11 DECEDENT;

12 (II) DID NOT VOLUNTARILY AND EXPRESSLY WAIVE, IN  
13 WRITING, A RIGHT TO DISCLOSURE OF THE PROPERTY OR FINANCIAL  
14 OBLIGATIONS OF THE DECEDENT BEYOND THE DISCLOSURE PROVIDED; AND

15 (III) DID NOT HAVE, OR REASONABLY COULD NOT HAVE HAD,  
16 AN ADEQUATE KNOWLEDGE OF THE PROPERTY OR FINANCIAL OBLIGATIONS OF  
17 THE DECEDENT.

18 (C) AN ISSUE OF UNCONSCIONABILITY OF A WAIVER IS FOR DECISION  
19 BY THE COURT AS A MATTER OF LAW.

20 (D) UNLESS THE WAIVER PROVIDES TO THE CONTRARY, A WAIVER OF  
21 "ALL RIGHTS", OR EQUIVALENT LANGUAGE, IN THE PROPERTY OR ESTATE OF A  
22 PRESENT OR PROSPECTIVE SPOUSE OR A COMPLETE PROPERTY SETTLEMENT  
23 ENTERED INTO AFTER OR IN ANTICIPATION OF SEPARATION OR DIVORCE IS A  
24 WAIVER OF ALL RIGHTS OF ELECTIVE SHARE, HOMESTEAD ALLOWANCE,  
25 EXEMPT PROPERTY, AND FAMILY ALLOWANCE BY EACH SPOUSE IN THE  
26 PROPERTY OF THE OTHER AND A RENUNCIATION BY EACH OF ALL BENEFITS  
27 THAT WOULD OTHERWISE PASS TO THE SPOUSE FROM THE OTHER BY  
28 INTESTATE SUCCESSION OR BY VIRTUE OF A WILL EXECUTED BEFORE THE  
29 WAIVER OR PROPERTY SETTLEMENT.

30 3-414.

31 (A) (1) A PAYOR OR OTHER THIRD PARTY IS NOT LIABLE FOR HAVING  
32 MADE A PAYMENT OR TRANSFERRED AN ITEM OF PROPERTY OR OTHER BENEFIT  
33 TO A BENEFICIARY DESIGNATED IN A GOVERNING INSTRUMENT, OR FOR HAVING

1 TAKEN ANOTHER ACTION IN GOOD FAITH RELIANCE ON THE VALIDITY OF A  
2 GOVERNING INSTRUMENT, ON REQUEST AND SATISFACTORY PROOF OF THE  
3 DEATH OF THE DECEDENT, BEFORE THE PAYOR OR OTHER THIRD PARTY  
4 RECEIVED WRITTEN NOTICE FROM THE SURVIVING SPOUSE OR  
5 REPRESENTATIVE OF THE SPOUSE OF AN INTENTION TO FILE A PETITION FOR  
6 THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS  
7 BEEN FILED.

8 (2) A PAYOR OR OTHER THIRD PARTY IS LIABLE FOR PAYMENTS  
9 MADE OR OTHER ACTIONS TAKEN AFTER THE PAYOR OR OTHER THIRD PARTY  
10 RECEIVED WRITTEN NOTICE OF AN INTENTION TO FILE A PETITION FOR THE  
11 ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS BEEN  
12 FILED.

13 (B) (1) A WRITTEN NOTICE OF INTENTION TO FILE A PETITION FOR  
14 THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS  
15 BEEN FILED SHALL BE MAILED TO THE MAIN OFFICE OR HOME OF THE PAYOR  
16 OR OTHER THIRD PARTY BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT  
17 REQUESTED, OR SERVED ON THE PAYOR OR OTHER THIRD PARTY IN THE SAME  
18 MANNER AS A SUMMONS IN A CIVIL ACTION.

19 (2) (I) ON RECEIPT OF WRITTEN NOTICE OF INTENTION TO  
20 FILE A PETITION FOR THE ELECTIVE SHARE OR THAT A PETITION FOR THE  
21 ELECTIVE SHARE HAS BEEN FILED, A PAYOR OR OTHER THIRD PARTY MAY PAY  
22 AN AMOUNT OWED OR TRANSFER OR DEPOSIT AN ITEM OF PROPERTY HELD BY  
23 THE PAYOR OR OTHER THIRD PARTY TO:

24 1. THE COURT HAVING JURISDICTION OF THE  
25 PROBATE PROCEEDINGS RELATING TO THE ESTATE OF THE DECEDENT; OR

26 2. IF NO PROCEEDINGS HAVE BEEN COMMENCED, TO  
27 OR WITH THE COURT HAVING JURISDICTION OF PROBATE PROCEEDINGS  
28 RELATING TO ESTATES OF THE DECEDENT LOCATED IN THE COUNTY OF THE  
29 RESIDENCE OF THE DECEDENT.

30 (II) THE COURT SHALL HOLD THE FUNDS OR ITEM OF  
31 PROPERTY, AND, ON THE DETERMINATION OF THE COURT MADE UNDER §  
32 3-411(D) OF THIS SUBTITLE, SHALL ORDER DISBURSEMENT IN ACCORDANCE  
33 WITH THE DETERMINATION.

34 (III) IF A PETITION IS NOT FILED IN THE COURT WITHIN THE  
35 SPECIFIED TIME UNDER § 3-411(A) OF THIS SUBTITLE OR, IF FILED, THE  
36 DEMAND FOR AN ELECTIVE SHARE IS WITHDRAWN UNDER § 3-411(C) OF THIS

1 **SUBTITLE, THE COURT SHALL ORDER DISBURSEMENT TO THE DESIGNATED**  
2 **BENEFICIARY.**

3 **(IV) PAYMENTS OR TRANSFERS TO THE COURT OR DEPOSITS**  
4 **MADE INTO COURT DISCHARGE THE PAYOR OR OTHER THIRD PARTY FROM ALL**  
5 **CLAIMS FOR AMOUNTS SO PAID OR THE VALUE OF PROPERTY SO TRANSFERRED**  
6 **OR DEPOSITED.**

7 **(C) ON PETITION TO THE PROBATE COURT BY THE BENEFICIARY**  
8 **DESIGNATED IN A GOVERNING INSTRUMENT, THE COURT MAY ORDER THAT ALL**  
9 **OR PART OF THE PROPERTY BE PAID TO THE BENEFICIARY IN AN AMOUNT AND**  
10 **SUBJECT TO CONDITIONS CONSISTENT WITH THIS SUBTITLE.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
12 construed to apply only prospectively and may not be applied or interpreted to have  
13 any effect on or application to any estate opened before the effective date of this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2012.